

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(230)**CRR-952-2022****Date of Decision: 27.02.2023**

Randhir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.G. C. Shahpuri, Advocate, for the petitioner.

Mr. Surinder Singh, AAG, Haryana.

Mr. D. K. Sharma, Advocate,
for the respondent No.2, 3and 4.

HARKESH MANUJA, J.(ORAL)

By way of present petition, challenge has been made to an order dated 08.04.2022 passed by the Court of learned Sessions Judge, Yamuna Nagar at Jagadhari, whereby, application filed at the instance of petitioner/complainant, invoking Section 319 Cr.P.C., for summoning of Sandeep, Sudhir and Rajan as additional accused, has been dismissed.

In the present case FIR No.272 dated 03.10.2021 was registered at Police Station Chhappar, District Yamuna Nagar, at the instance of petitioner/complainant against Seema Devi, Sandeep, Sudhir and Rajan. Upon investigation, *challan* against Seema Devi was filed before the Illaqa Magistrate on 24.11.2021 whareas other three accused i.e. Sandeep, Sudhir and Rajan were placed in column No.2

The petitioner/complainant appeared as PW-1 before the trial Court on 15.03.2022. Based upon his deposition, an application under Section 319 Cr.P.C. was filed, seeking summoning of Sandeep, Sudhir and Rajan i.e.

private respondents as additional accused. However, the same was rejected vide order dated 08.04.2022 passed by the Court of learned Sessions Judge, Yamuna Nagar at Jagadhari, which has been impugned by way of present petition.

Learned counsel for the petitioner submits that the Court below while passing the impugned order failed to exercise its jurisdiction under Section 319 Cr.P.C. as the statement made by petitioner/complainant Randhir Singh was not appreciated by the Court below in its proper perspective. Referring to the aforesaid statement of PW-1 as Annexure P-3 (at page No.31), learned counsel for the petitioner submits that each and every minute detail of the incident showing involvement of the private respondents in the alleged incident has been disclosed therein which somehow missed the consideration of the learned Court below and thus, prays for setting aside the impugned order. He relies upon the judgments passed in the cases of **Hardeep Singh Vs. State of Punjab**, 2014(1) RCR (Criminal) 623, **Kailash Vs. State of Rajasthan**, 2008 (2) RCR (Criminal) 2000, **Sarabjit Singh and another Vs. State of Punjab**, 2009(3) RCR (Criminal) 388 and **Brijender Singh and another Vs. State of Rajasthan**, 2004(2) RCR (Criminal) 264.

On the other hand, learned State counsel representing respondents No.2 to 4 has vehemently opposed the prayer made in the petition while submitting that the statement of PW-1 (petitioner/complainant) was merely reiteration of the statement made by him before the police at the time of registration of FIR as well as the statement recorded under Section 161 Cr.P.C., during the investigation.

Per contra, learned counsel for the private respondents submits that in the absence of any material to connect the private respondents with the alleged offence, the trial Court rightly declined the prayer made by the

petitioner/complainant for summoning them as additional accused.

I have heard learned counsel for the parties and gone through the paper book.

For the purpose of adjudication of the present petition, the statement of PW-1 i.e. Randhir Singh/petitioner/complainant is relevant and thus a portion thereof is reproduced as under:-

“.....At about 4:30/5:00 p.m. on 02.10.2021, Sandeep, Sudhir and Rajan came to my house and called my son Shubham outside the house. They threatened my son Shubham that he would be killed. After threatening my son, they left that place. On my asking as to why those persons had come, my son Shubham did not reveal anything to me, but he was terrified. I went inside our house. At about 6:00 p.m. on 02.10.2021, my son Subham started in the street. I again enquired from my son Shubham and he disclosed to me that accused Seema was harassing him and was forcing him to make physical relations with her. He further disclosed to me that he had tried to make the accused understand on the pretext that she was his aunty in relation, but she was adamant. He further disclosed to me that on that day also, he was called by the accused to her house for making physical relation and when they both were talking to each other Sandeep the husband of accused Seema, saw them while talking. He further disclosed to me that thereafter, Sandeep, Sudhir and Rajan had come to our house and had threatened to implicate him in a false case of rape of accused Seema or in any other case or they would kill him and due to threat and harassment at their hands, he had consumed pills of cephos. I with the help of my nephew, namely, Vishal took my son Shubham to S.P.Hospital, Mullana. We took my son Shubham to M. M. Hospital, Mullana in an ambulance, where he died during the course of treatment. My son Shubham committed suicide due to instigation and threats extended by accused Seema, Sandeep, Sudhir and Rajan by consuming cephos.....”

The crucial test to be applied for summoning of an individual as an additional accused is more than prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that in case the same goes un-rebutted, it would lead to conviction as is clear from the language used under Section 319 Cr.P.C. which reads as: “***it appears from the evidence***”.

Applying the aforesaid principle and upon going through the statement of PW-1 Randhir Singh wherein, each and every minute detail has been given mentioning the role of the private individuals which at this stage appears to be more than sufficient for the purpose of summoning of private respondents as additional accused. As regards the contention raised about any material against them so as to connect them to the alleged offence, it may be pointed out here that the statement made by PW-1 i.e. petitioner/complainant is complete and comprehensive. Even, otherwise, the Hon’ble Supreme Court in the case of **Sartaj Singh Vs. State of Haryana, 2021 (4) Scale 227** has made the following observations which are relevant for the adjudication of the case in hand and thus reproduced hereunder:

“(7).....In any case, in the examination-in-chief of the appellant injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein – injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.”

Apart from that, a perusal of the impugned order shows that

while deciding the application filed at the instance of petitioner, his statement made before the Court as PW-1 has nowhere been discussed and taken into account. The trial Court while passing the impugned order primarily referred to the evidence collected at the time of filing of final report and thus, impugned order is liable to be set aside on this count as well.

The present petition is therefore allowed and the application filed at the instance of petitioner for summoning of private respondents as additional accused stands accepted.

(HARKESH MANUJA)
JUDGE

27.02.2022
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No